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South Carolina House of Representatives



Legislative Update

Robert J. Sheheen, Speaker of the House

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House Week in Review

On Thursday, the House agreed by special order to take up this Tuesday two measures---H. 3631 and H. 4955. H. 3631 prohibits a health insurance policy or health maintenance organization plan from restricting selection of a person's pharmacy of choice or restricting a pharmacist's right to participate as a provider under the plan or policy. H. 4955 is a joint resolution authorizing the Budget and Control Board to transfer \$600,000 to a local public entity for the benefit of Charleston's Spoleto Festival. The House also began debate on H. 3958, a bill requiring the State Board of Education to develop and implement a state assessment system for purposes of improving student learning and providing public accountability. A proposal to amend the bill by deleting a section requiring parental consent before a student could undergo certain testing or counseling aroused considerable debate, and the House decided to delay further consideration of the bill til next Tuesday to further examine ramifications of the proposed deletion and other parts of the bill.

The House ended the week by taking up S. 88, a bill requiring facilities which perform a specified number of abortions to be licensed by the Department of Health and Environmental Control (DHEC) to operate as abortion clinics and requiring DHEC to promulgate health and safety regulations for those clinics. An amendment was offered which would attach H. 3267 (the Woman's Right to Know Bill) to S. 88. (H. 3267 requires women to be offered certain information before obtaining an abortion and also requires a brief waiting period; the bill was passed in early March by the House but has yet to clear the Senate committee to which it was referred.) A point of order was raised questioning the germaneness of the amendment, but the Speaker overruled this point of order. Shortly thereafter, the House adjourned for the week, but the bill is at the top of the second reading statewide uncontested calendar upon the House's return on Tuesday.

This coming week represents an important deadline in the House legislative process, with Thursday, April 14 being the last day any House statewide bills or resolutions may be introduced in order to receive further consideration in 1994. Under House Rule 5.12, any House legislation introduced after that date may be given first reading and referred to a committee but cannot receive further consideration on the House floor unless two-thirds of members present and voting agree to waive this rule. Senate-introduced legislation must be received by the House prior to May 1 in order to receive further consideration this year.

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Bills Introduced

The following bills were introduced in the House last week. Not all bills introduced in the House are listed here. The bill summaries are arranged according to the committee to which the legislation was referred.

Agriculture, Natural Resources and Environmental Affairs

Referendums To Be Held To Approve Assessments on Marketed Tobacco for Tobacco Production Research (H. 5034, Rep. Witherspoon). This bill requires a referendum to be held in every county where flue-cured tobacco is produced to determine whether tobacco is to be assessed at a rate of 10 cents for every 100 pounds marketed to provide funds to the South Carolina Tobacco Foundation for tobacco production research. Only individual flue-cured tobacco quota holders (as designated by the Agriculture Stabilization and Conservation Service of the U.S. Department of Agriculture) may participate in the referendum, which is to be conducted by the Tobacco Foundation. Approval of the referendum requires a two-thirds vote of those tobacco producers voting. These referendums are to be held within 6 months of the effective date of these provisions.

If the referendum is approved, then the assessment may be collected for four years by the foundation from the tobacco producers, and another referendum must be held in four years and each four years after approval to confirm approval of the assessment. A referendum which is defeated may not be offered again for approval for one year. A tobacco producer assessed pursuant to these provisions may receive a refund of his assessment if a request is made to the foundation within 30 days of collection of the assessment. A person or organization receiving funds from the foundation pursuant to this assessment must file quarterly reports with the foundation on the receipt and expenditure of the funds.

Education and Public Works

Vehicles Displaying a License Plate or Placard for the Handicapped May Be Parked in Any Handicapped Parking Space (H. 5022, Rep. Cromer). This bill allows a vehicle properly displaying a distinguishing license plate or placard for the handicapped to be parked in any parking space

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identified as a handicapped parking space, whether the parking space is on public or private property.

Certain Options Must Be Offered to Students Exiting School System Without Having Passed the Exit Examination (H. 5027, Rep. Breeland). Current law requires a student to pass an exit examination as a condition for receipt of a state high school diploma and requires a student who fails to pass this exam by the end of the 12th grade to be awarded a state certificate indicating the number of credits earned and grades completed. Students currently have four opportunities to pass this exit exam. This bill offers additional options to students failing to pass the exit exam by that time, providing that such students must be offered the following opportunities:

- (1) acceptance of a certificate indicating the number of credits earned and grades completed instead of diploma;
- (2) return in the fall as a senior (if under the maximum age for attending high school), fully enroll in school and retake the exit exam twice if necessary, in the same manner as offered to other seniors;
- (3) enrollment in adult education; or
- (4) enrollment in a newly-established summer school exit exam program.

A student failing to pass the exit exam after 4 chances and who certifies that his military, educational or other career goals must be placed on hold because of his failure to pass the exam must be offered a summer testing of the exit exam, following a remediation program in summer school after the student's 12th grade year, allowing the student to move forward with their career in a timely manner. If the student fails the exit exam following this summer program, then he must be offered the first three options listed in this bill. The cost of the summer school program is to be paid by the student.

Issuance of Research and Development License Plates (S. 1156, Sen. Reese). This bill permits the issuance of research and development license plates to a research and development business. The bill defines a "research and development business" (hereafter called "business") as a person who manufactures tires in South Carolina for use as original equipment on new and unused vehicles and who conducts research and development activities on tires in conjunction with the person's manufacturing activities in South Carolina. These plates must be used exclusively on motor vehicles (including motorcycles) provided by a motor vehicle manufacturer to the business for purposes of testing and evaluating the performance of the business's tires on the motor vehicle.

Anyone applying to the Department of Revenue and Taxation for these plates must provide proof of the applicant's status as a bona fide research and development business. The cost of each plate is \$200, of which \$160 is remitted by the Department to the county where the testing facility of the business is located. Each plate is valid for two years, and an applicant may be issued a maximum of 30 of these plates for that period. Vehicles with these plates may be operated on the state's streets

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and highways only for the purposes of testing and evaluating the performance of the business's tires on the motor vehicle. The bill also provides a property tax exemption for vehicles with these plates.

Judiciary

Juvenile Crime Prevention Act of 1994 (H. 5011, Rep. Hodges). This "skeleton bill" would serve as a vehicle to enact the Juvenile Crime Prevention Act of 1994. (This bill was being drafted as the Update went to press and the complete version of the bill is expected to be introduced in the House the week of April 12.)

Adult Crime Prevention Act of 1994 (H. 5012, Rep. Hodges). This "skeleton bill" would serve as a vehicle to enact the Adult Crime Prevention Act of 1994. (Like H. 5011, this bill was being drafted as the Update went to press, with the complete version of the bill expected to be introduced in the House the week of April 12.)

South Carolina Criminal Justice Reform Act of 1994 (H. 5013, Rep. Clyborne). This bill seeks to reform several elements of the state's criminal justice system, addressing three areas: (1) criminal law reform; (2) juvenile justice reform; and (3) appellate reform. In the area of criminal law reform, the bill increases penalties for certain crimes, toughens eligibility standards for work release and other programs for prisoners. In the area of juvenile justice reform, the bill, among other things, requires the Department of Juvenile Justice to establish a self-contained residential shock incarceration program for juveniles and to utilize an objective instrument to determine a juvenile's risk to the community to reoffend. In the area of appellate reform, the bill requires applications for relief under the State's Uniform Post Conviction Procedure Act to be filed within a specified time period. Listed below is a summary of selected features under each area:

(I) Criminal Law Reform

The bill requires a person who commits a crime while released on bond and who subsequently is convicted for that offense to be sentenced as provided for the offense, with this term of imprisonment being consecutive to any sentence imposed for the offense for which the person was released on bond. The bill also prohibits a person convicted of a state offense and sentenced to the custody of the Department of Corrections from being eligible for work release unless the prisoner has served (a) at least 60 percent of his sentence if convicted of a violent crime or (b) at least 50 percent of his sentence if convicted of a non-violent crime. Additionally, the prisoner is not eligible for early release or discharge (including but not limited to extended work release and community supervision) unless he has served 90 percent of his sentence (if convicted of a violent crime) or 80 percent of his sentence (if convicted of a non-violent crime). These restrictions on early release, etc., do not apply in cases of emergency

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prison overcrowding. Additionally, the definition of "violent crime" is expanded to include criminal sexual conduct with minors in the first and second degree; assault with intent to commit criminal sexual conduct in the first and second degree; trafficking in ice, crank or crack cocaine; engaging a child for a sexual performance; accessory before the fact to commit a violent crime and any attempt to commit a violent crime.

Also under these provisions, a person convicted of or pleading guilty to murder, and who is not sentenced to death, must be imprisoned for at least 30 years or for life (with life imprisonment meaning "imprisonment until death"). The penalties for the crime of stalking are increased, with maximum imprisonment increasing from 1 to 10 years and the maximum fine increasing from \$1,000 to \$5,000. Categories of "most serious offenses" (e.g., violent crimes, certain other felonies) and "serious offenses" are established for sentencing purposes, with a person convicted of a "most serious offense" a second time sentenced to life imprisonment and eligible for parole only upon 30 years' service, with a third conviction resulting in life imprisonment without parole. A person convicted a fifth or subsequent time of a "serious offense" must be imprisoned for life and not eligible for parole until 20 years' service. Additionally, a county governing body must, instead of may, require prisoners under its jurisdiction to perform litter control functions within the county and also must utilize county work gangs. Furthermore, a person convicted, or a juvenile adjudicated, for a crime involving sexual assault, sexual battery, prostitution, buggery or committing a lewd act on a child under age 14 must be tested for the HIV virus if the victim or the parent of the guardian of a victim who is a minor or mentally retarded or mentally incapacitated makes this request to the solicitor. Test results which indicate the offender is infected with the virus must be reported to the Departments of Corrections and Juvenile Justice, which are to use this information solely for providing medical treatment for the offender while confined within their respective facilities.

(II) Juvenile Justice Reform

The bill requires the Department of Juvenile Justice (DJJ) to establish a self-contained residential shock program for juveniles adjudicated delinquent and committed to DJJ. This program must be of 60 days' duration and must provide, in a highly-structured and disciplined setting, a program of physical activity, work and drill which emphasizes rehabilitation, education, self-sufficiency and personal development of the juveniles. Juveniles adjudicated delinquent for nonviolent criminal acts occurring in or around school property are to be given priority for transfer into this program. The bill lists other conditions for eligibility for this program and requires the director of DJJ to transfer juveniles to this program based on the recommendation of a Shock Incarceration Screening Committee, which must utilize a Risk Classification Instrument in making recommendations to the director. Juveniles successfully completing this program must be granted a conditional release from their commitment to DJJ, but juveniles who do not

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successfully finish the program must be transferred to a secure correctional facility operated by DJJ. Additionally, the bill provides that the circuit courts have concurrent jurisdiction with family courts for the trial of persons age 16 charged with a felony which carries a maximum sentence of at least 15 years; provides for the release of a juvenile's record for any crime committed (as opposed to only violent crimes committed) and requires a juvenile's record to be expunged after 10 years if he is not adjudicated for subsequent offenses (except for violent crimes). Also listed are recommendations DJJ may make to the Family Court for the appropriate level of custody and supervision for juveniles and allows the court to require, among other things, the parents of juveniles to attend family counseling or other programs, and provides that payment for court-ordered restitution or programs must be based on the parent's or child's ability to pay, using a scale developed by DJJ in conjunction with Court Administration.

(III) Appellate Reform

The bill requires an application for relief (i.e., a person's appeal of a sentence because of questions of constitutionality, excessive length, etc.) under the State's Uniform Post Conviction Procedure Act to be filed within one year after the entry of judgment or conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal. Additionally, when a court whose decisions are binding upon the State Supreme Court, or that court holds that either/both the state or federal constitution impose on state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and the standard or right is intended to be applied retroactively, then the application for relief may be filed not later than one year after the date on which the standard or right was determined to exist. The bill also increases from five to ten the maximum number of peremptory challenges to which the State is entitled when a person is arraigned for various crimes.

Parties in Divorce Action Must Attend a Seminar Addressing Effect of Divorce on Children Before Divorce May Be Granted (H. 5017, Rep. J. Wilder). This bill requires parties in a divorce action to attend and complete a seminar addressing the effect of divorce and children before the court may order a divorce. The seminar may be one such as "Children Cope with Divorce" or another similar seminar approved by the court, and the party must bear the expense of this seminar.

Establishment of Crimes of Medical Assistance Provider and Recipient Fraud (S. 782, Sen. Rose). This bill establishes the misdemeanor crimes of medical assistance provider fraud and medical assistance recipient fraud. Under these provisions, a "provider" includes a person providing goods, services or assistance and who is or claims to be entitled to receive reimbursement, payment or benefits under the state's Medicaid program;

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additionally, a "provider" includes a person acting as an employee, representative or agent of the provider.

A provider is guilty of medical assistance provider fraud (punishable by maximum imprisonment of three years' imprisonment and a maximum \$1,000 fine) if he (1) makes a false claim or statement in applying for a reimbursement from or to qualify for or remain qualified for reimbursements under the State's Medicaid program or (2) conceals or fails to disclose material information affecting his initial or continued entitlement to payment, reimbursement or benefits under the state's Medicaid plan or affecting the amount of payment, reimbursement or benefit to which he may be entitled for rendering of assistance, goods or services. Additionally, the Attorney General may bring an action to recover damages equal to three times the amount of an overstatement or overpayment, and the court may impose a civil penalty of \$2,000 for each false claim, representation or overstatement made to a state or federal agency which administers funds under the state's Medicaid program. Upon a finding that the provider has violated this prohibition, the state agency administering the Medicaid program may impose other administrative sanctions against the provider.

A person is guilty of medical assistance recipient fraud (punishable by maximum imprisonment of three years and/or a maximum fine of \$1,000) if he makes a false statement or misrepresentation of fact (if made for determining his entitlement to assistance, goods or services) in applying for Medicaid assistance or services; if he, while eligible for Medicaid assistance or services, sells, leases or otherwise exchanges rights, privileges and benefits to another person; or if an applicant, recipient or other person acting on behalf of the applicant or recipient knowingly conceals or fails to disclose material fact affecting the applicant's or recipient's initial or continued entitlement to receive Medicaid benefits.

Providers of medical assistance, services, etc. under the state's Medicaid program who are required by law, regulation or policy to maintain separate accounts for patient funds and accurate records of these funds must, under this act, maintain separate accounts and records of the accounts, and may not transfer, remove, encumber or cause to be transferred, removed or encumbered patient funds for a purpose other than as authorized. Violation of this prohibition is punishable by imprisonment of not more than one year and a fine not exceeding \$1,000. Additionally, the Attorney General may bring an action to recover damages equal to \$5,000 for each violation of this prohibition. Upon a finding that a provider has violated this provision, the state agency administering the Medicaid program may also take other administrative action authorized under state or federal laws.

The bill makes the Attorney General responsible for investigating and initiating action for alleged or suspected violations of this act and allows him to issue subpoenas and subpoenas duces tecum to anyone he believes has information relevant to an investigation of suspected or alleged violations of this act. In case of noncompliance with the subpoena

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or subpoena duces tecum, the attorney general or his designee may petition the court of common pleas to compel the person's compliance with those requests. Additionally, the court may issue an order to prevent destruction, removal or other tampering with records requested under a subpoena duces tecum. A person failing to comply with either of these orders may be punished for contempt. However, an individual compelled to testify or produced evidence under these provisions may not be prosecuted or subjected to a penalty or forfeiture on account of his testimony or production of evidence.

Verification of Party Affiliation of Proposed Appointees to County Election Commissions (S. 879, Sen. Mescher). Under current law, the governor is responsible for appointing three to five commissioners of election for each county, based on the recommendation of a county's senatorial delegation and at least half of the county's House members, for each county for the purpose of carrying on general or special elections, while the State Election Commission is responsible for verifying that at least one of the appointees represents the largest political party and at least one represents the second largest political party as determined by the composition of the county's delegation in the General Assembly or the General Assembly's makeup as a whole. This bill deletes provisions requiring the State Election Commission to verify the political affiliations of appointees and instead requires the county's senators and House members to submit the proposed names for appointment to the secretaries of the appropriate political parties for written verification of party affiliation. Once this verification is received, the names may then be forwarded to the governor, who then notifies the State Election Commission in writing of these appointments.

Expansion of Size of Legislative Audit Council and Change in Procedure for Electing Council Members (S. 1040, Sen. Bryan). This bill expands the size of the Legislative Audit Council from three to five members and requires that when the General Assembly meets in joint session to elect the Council, the members of the Council must be elected by a majority of the vote of the House and a majority of the vote of the Senate.

South Carolina Solicitation and Charitable Funds Act (S. 1062, Sen. Hayes). This was the companion bill to H. 4541 (summarized in the January 25 Update and still pending in the House Judiciary Committee), which amends several provisions of the State's Solicitation of Charitable Funds Act to remove several provisions which have been declared unconstitutional and require disclosure of certain information from charitable organizations conducting business in South Carolina. Before sending it to the House, the Senate amended this bill to, among other things, narrow the definition of "professional solicitor" as pertains to this act; provide that fees paid to the State Treasurer pursuant to this act are to be appropriated to the Secretary of State for the administration and enforcement of this act; and to clarify certain language (e.g., make it a

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misdemeanor for a person to knowingly and wilfully violate, instead of only "violate", the provisions of this act).

Repeal of Subversive Activities Registration Act (S. 1137, Sen. Mescher). This is the companion bill to H. 4654, repealing the State's Subversive Activities Registration Act. This act requires every organization, foreign agent and person which/who resides, transacts business or attempts to influence political action in South Carolina to register with the Secretary of State if the organization or person advocates the violent overthrow or seizure of the government of the United States, the government of South Carolina, or the government of any political subdivision of this state.

Law Enforcement Officer Taking Child Into Custody for Offense Must Notify the Child's Principal of the Nature of the Offense (S. 1199, Sen. Hayes). This bill requires a law enforcement officer who takes a child into custody for an offense which would be a misdemeanor or felony if committed by an adult (not including traffic or wildlife violations over which courts other than the family court have concurrent jurisdiction) to notify the principal of the school where the child is enrolled, if any, of the nature of the offense. The principal may use this information for monitoring and supervisory purposes but otherwise must keep this information confidential.

Offices of County Boards of Voter Registration May in Certain Circumstances Be Located Outside the County Seat (S. 1227, Sen. McConnell). This bill allows the office of a county board of voter registration to be located outside the county seat if it is not possible or practical to locate the office in the county seat.

Labor, Commerce and Industry

Interest in Liquor Stores (H. 5010, Rep. Gonzales). Current law prohibits a person from having an interest in more than three retail liquor stores. This bill specifies that the current limit on such interests imposed on a relative to a person within the second degree applies to a relative who resides in that person's household and that the limit on interests in retail liquor stores applies to financial interests.

Mergers, Consolidations and Purchases of Railroads (H. 5015, Rep. Harrison). Current law requires a person acquiring a railroad within South Carolina by purchase or other method to reorganize and commence operation of the railroad within 60 days. This bill provides that this requirement also applies to railroads acquired by foreclosure but does not apply to acquisitions of railroads by merger or consolidation. Additionally, the bill requires the consolidation of railroad companies to be carried out under the state's general railroad law, while mergers of railroad companies are to be carried out under the State's Business Corporation Act.

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Criminal Record History Must Be Obtained on Persons Seeking Initial Registration as a Broker-Dealer, Agent, Investment Advisor or Investment Advisor Representative (S. 665, Sen. Leventis). This bill requires a criminal record history to be obtained from the State Law Enforcement Division for each person's initial application for registration as a broker-dealer, agent, investment advisor or investment advisor representative. All convictions recorded within seven years of the application date must be noted on the registration, and a search of the bankruptcy records must be made on each applicant at the time of initial application, with any adjudication of personal bankruptcy to be noted on the registration. The bill also increases the initial registration fee, with the increase being of an amount sufficient to cover the cost of the criminal record history and bankruptcy search.

Change in Amount of Maximum Group Life Insurance Coverage Permitted for a Spouse or Child (S. 884, Sen. Rose). This bill deletes a provision which limits to \$10,000 the maximum amount of group life insurance coverage permitted on a policy for a spouse or child.

Medical, Military, Public and Municipal Affairs

Physicians' Patient Records Act Changed to Patient Medical Records Act (H. 5019, Rep. Witherspoon; S. 48, Sen. Bryan).

H. 5019 changes the name of the "Physicians' Patient Records Act" (Title 44, Chapter 115 of the Code of Laws) to the "Patient Medical Records Act." This act, enacted in 1992, provides, among other things, that a physician is the owner of his patient's medical records and that a patient or his legal representative has the right to receive a copy or summary of his medical record or have that record transferred to another physician. The bill also replaces references to "physicians" with "health care providers", thus making health care providers subject to the provisions of this act. The bill defines a "health care provider" as a person, health care facility, organization or corporation licensed, certified or otherwise authorized or permitted by South Carolina laws to administer health care.

S. 48, like H. 5019, renames the "Physicians' Patient Records Act" as the "Patient Medical Records Act." However, S. 48 also contains provisions which are not found in H. 5019. S. 48 provides that with regard to release by a provider of a patient's medical records, a hospital is not required to release a copy of a medical record prior to 30 days after discharge of a patient, although the hospital must comply with requests for copies of a medical record no later than 45 days after the patient has been discharged or 45 days after the request is received, whichever is later. Additionally, unlike H. 5019, S. 48 allows a health care provider to charge a fee for the search and duplication of a medical record, with the fee not exceeding 75 cents per page for the first 30 pages, 50 cents per page for all other pages and a clerical fee for searching and handling not

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to exceed \$15 per request plus actual postage and sales or other taxes. The provider also may charge a patient no more than the actual cost of reproducing an x-ray, with the "actual cost" meaning the cost of material and supplies used to duplicate the x-ray and the labor and overhead costs associated with the duplication. These fees must be adjusted biennially in accordance with changes in the Consumer Price Index.

Child Day Care Facilities Must Provide Proof of Conformity or Authorized Nonconformity with Zoning Ordinances or Resolutions (H. 5021, Rep. Shissias). This bill requires a child day care facility, at the time of its initial licensing, approval or registration, to provide proof of conformity or authorized nonconformity with county or municipal zoning ordinances or resolutions. These provisions also permit the Department of Social Services to impose conditions on the licensure, approval or registration of the child day care facility consistent with restrictions imposed by zoning authorities. The bill also deletes an obsolete reference pertaining to the issuance of a provisional registration, provisional license or provisional approval to a child day care facility.

Revisions to Child Fatality Review Act (H. 5028, Rep. Cobb-Hunter). Last year, the General Assembly passed the Child Fatality Review Act for the purpose of expeditious investigation of child deaths. In creating this act, a State Child Fatality Advisory Committee was created to develop an understanding of the causes of child deaths and develop plans and implementing changes within agencies represented on the committee which would prevent child deaths. This bill expands the membership of this committee to include (1) a forensic pathologist and (2) two members of the public at large, of whom one must represent a private nonprofit organization that advocates children services. The bill requires an autopsy performed on a child to be performed by a pathologist with forensic training, rather than by a forensic pathologist. Additionally, when a medical examiner wishes to petition for a warrant to inspect the home of a deceased child, the petition may be made to and the inspection warrant issued by his local magistrate, instead of by the circuit court.

Establishment of Advisory Committee to Study Future of Public Health in South Carolina (S. 1138, Sen. V. Smith). This joint resolution requires the Human Services Coordinating Council to appoint and convene a 14-member advisory committee on the future of public health in South Carolina. This committee must study appropriate changes in the public health responsibilities, functions and resources of all state agencies involved with public health, and staff of the Budget and Control Board and these state agencies must facilitate and support the meetings and activities of this committee. Members of the committee must have substantial expertise in public health, preventive medicine, environmental health or other related disciplines. Of the 14 committee members, six must be faculty members of USC, the Medical University of South Carolina or Clemson University; four must be chief executives or their designees of the Department of Health and Environmental Control, Department of Disabilities and Special Needs, Department of Mental Health and Department of Alcohol

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and Other Drug Abuse Services; two must be chairmen or their designee of the South Carolina Medical Association and the South Carolina Hospital Association; and two must be persons with no current affiliation with a state university or agency. The committee is to submit a preliminary report to the Human Services Coordinating Council by January 1, 1995 and must present a final report and recommendations to the governor and General Assembly before the committee's dissolution, by July 1, 1995.

Ways and Means

Buses Used for Head Start Program Exempt from Payment of State Gasoline Taxes and Motor Fuel Taxes (H. 5014, Rep. Kelley). This bill exempts buses owned by agencies which administer Head Start programs from payment of state gasoline taxes and state motor fuel taxes.

Sales Tax Exemption for Fees Imposed on Sale of Certain Goods Pursuant to State's Solid Waste Policy and Management Act (H. 5016, Rep. Robinson). This bill provides a sales tax exemption on the sale of motor oil, new tires, lead-acid batteries and white goods on which fees are imposed under South Carolina's Solid Waste Policy and Management Act.

Property Tax Relief Sales Tax Act (H. 5023, Rep. Sturkie). This bill increases the state sales and use tax from 5 to 8.5 percent and requires, beginning July 1, 1995, the first \$2.1 billion in revenue raised from this 3.5 percent increase to be credited to a separate fund in the State Treasury named the Property Tax Relief Fund. The amount of revenues credited to this Fund, beginning in Fiscal Year 1996-1997, must be adjusted by the rate of increase in the consumer price index. Proceeds from this Fund are first to be used to pay current interest and principal on general obligation bonds and lease payments on certificates of participation in lease-purchase agreements of all counties, municipalities, school districts and special purpose or public service districts of the State outstanding as of July 1, 1995. Following deduction of amounts for these bonds and lease-purchase agreements, revenues from this Fund must, on a quarterly basis, be distributed as follows:

(a) 61.99 percent to school districts based on the proportion that the district's 135 day average daily membership is to the State's total 135 day average daily membership;

(b) 25.64 percent to counties based on the percentage that the population of the unincorporated area of a county is of the total population of the State's unincorporated areas; and

(c) 12.37 percent to municipalities based on the percentage that the population of the municipality is of the State's municipal population.

Counties, municipalities, school districts, special purpose districts or public service districts must receive from the Fund each year an amount not less than the entity's ad valorem revenues for property tax year 1994, with distributions to other entities reduced on a proportionate basis in order to meet this minimum distribution. A county must allocate

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a portion of its distribution from the Fund to any special purpose or public service district in the county if the district imposed a property tax millage for tax year 1994, with the allocation based on the percentage of the total of county and district property tax revenues for tax year 1994 represented by district property tax revenue for the same year.

The bill also adds a sales tax exemption for food which may be purchased with food stamps of the U.S. Department of Agriculture eliminates a number of sales tax exemptions, including, among others, for newspapers; religious publications; materials (textbooks, etc.) used as a part of a course of study in schools; fuel sold to manufacturers, electric power companies and transportation companies for various purposes (e.g., for generating power for use in manufacturing tangible personal property for sale); water sold by public utilities regulated by the Public Service Commission; combustible heating material used for residential purposes; and hearing aids. The bill also removes the \$300 sales tax cap on the sale or lease of motor vehicles, motorcycles, boats, recreational vehicles and self-propelled light construction equipment, and on the sale of musical instruments, office equipment, and machinery used for research and development and instead places a 4.5 percent sales tax rate on those items. The bill also imposes a \$300 sales tax cap on commercial vehicles with a manufacturer's gross weight rating in excess of 10,000 pounds.

The bill also deletes the state's local sales and use tax act, the state aid to subdivisions act, the homestead exemption act, and fee-in-lieu of services act.

State Officers and Employees Convicted of Felonies Arising Out of Performance of Duties Ineligible for State Retirement Benefits (H. 5031, Rep. Kirsh). This bill prohibits any state officer or employee convicted after June of 1994 of a felony arising out of the performance of official duties from being eligible to receive any benefits otherwise due the officer or employee under the state's retirement systems. This ineligibility also applies to benefits which would otherwise be due the officer's or employee's surviving spouse or other beneficiary. However, when payment of benefits is denied under these provisions, amounts actually contributed by the individual, minus amounts previously refunded or paid as benefits, must be refunded to the individual or, if deceased, to his beneficiary. These provisions apply to all state employees first employed after June of 1994 and to all state officers elected or appointed for a specific term of office for terms commencing after June of 1994.

Credit for Prior School District Employment for Annual Leave Purposes (H. 5033, Rep. Phillips). This bill requires any permanent full-time employee of a state agency or department to be given full state service credit for prior service as a certified employee of a school district of South Carolina for purposes of computing annual leave bonus earnings; however, this credit is to be given only if there is not a break in service.

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Sales Tax Exemption for Certain Solid Waste Disposal Bags Used in Solid Waste Disposal Plan (H. 5038, Rep. Baxley). This bill provides a sales tax exemption for solid waste disposal bags required pursuant to a county's or other political subdivision's solid waste disposal plan if that plan requires the purchase of a specifically-designated containment bag for solid waste disposal.

Issuance of Revenue Bonds (S. 178, Sen. Drummond). Current law requires a governing board (e.g., governing bodies of counties and incorporated municipalities for purposes of issuance of industrial development project revenue bonds, county governing bodies for purposes of issuance of hospital revenue bonds, etc.) proposing to issue revenue bonds for a project to first provide certain information to the Budget and Control Board, with that Board's approval required before the bonds may be issued. The bill makes technical changes, requiring the governing entity to provide other information about the project as the Budget and Control Board requires and specifies that, following approval of the Budget and Control Board, the governing board is to proceed with acquisition and financing of the project in accordance with the proposal as approved by the Budget and Control Board.

Assessment of Corporate and Distribution Facilities (S. 742, Sen. Land). This bill provides that the responsibility of the Department of Revenue and Taxation for appraisal, assessment and equalization of the taxable values of corporate headquarters, corporate office facilities and distribution facilities applies only to those headquarters and facilities with over 100,000 square feet in building space or to facilities qualifying for a property tax exemption. Additionally, the Department is to perform these functions on enterprises engaged in research and development activities and transportation companies for hire. The bill also provides that the value of property assessed by the unit valuation method must be distributed on a basis of gross investment except as otherwise provided and requires the Department to appraise and assess property leased to any taxpayer under its jurisdiction in the name of the lessee, provided the lessee has control of the property and is contractually required to pay the tax. The bill provides a formula for the Department to use in assessing the fair market value of electric distribution cooperatives and requires electric utilities subject to a license tax to remit the monthly tax due on or before the 20th day of each month, instead of between the first and tenth day of the month.

Minimum Acreage Requirements for Property to be Assessed as Agricultural Real Property (S. 920, Sen. Leventis). This bill sets minimum acreage requirements for land before it qualifies as agricultural real property for property taxation purposes, as follows:

(1) Land used to grow timber (for commercial use): The tract must be at least 5 acres; however; tracts under 5 acres that are contiguous to or under the same management system as a tract of timberland meeting the 5-acre requirement are treated as part of the qualifying tract, and

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timberland tracts under 5 acres are eligible for classification as agricultural real property when owned in combination with other tracts of nontimberland agricultural real property qualifying as agricultural real property.

(2) Land not used to grow timber: The tract must be at least 10 acres; however, nontimberland tracts under 10 acres which are contiguous to other such tracts which, when added together, meet the 10-acre requirement are treated as a qualifying tract. A non-timber tract under 10 acres may be classified as agricultural real property if the applicant reports at least \$1,000 in gross farm income on his federal income tax return. A tract under 10 acres classified as agricultural real property loses this classification if the owner fails to meet this income requirement, and the owner is subject to the agricultural rollback tax. Furthermore, a nontimberland tract not meeting the acreage or income requirement must nonetheless be classified as agricultural real property if the current owner or his immediate family member has owned the property since January 1, 1984 and the property is classified as agricultural real property for property tax year 1994 and in future years until applied to other use or transferred to other than an immediate family member, whichever comes first.

---In cases of rented or leased agricultural real property, if it is determined that the property for which certification was made did not meet the classification requirements at the time of certification, then property the subject of the certification is denied agricultural use value for the property tax year(s) in question. In lieu of the rollback tax, the tax on the property for each tax year must be recalculated using fair market value, the appropriate assessment ratio and the appropriate millage. An interest rate of one percent per month is added to unpaid taxes calculated from the last penalty date.

---Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices is classified as agricultural real property if the property otherwise would have so qualified, and unimproved real property subject to a perpetual conservation easement also must be classified as agricultural real property.

---Real property initially classified as agricultural real property but which is made ineligible because of these new classification requirements is not subject to the property rollback tax but is subject to change of use penalty equal to \$25.

---Unimproved and undeveloped real property not identified as part of a residential, commercial or industrial development must be taxed on an assessment equal to two percent of the fair market value of the property.

Department of Revenue and Taxation May Delay Implementation in a County of Biennial Registration of Vehicles (S. 1113, Sen. Mescher). This

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joint resolution allows the Department of Revenue and Taxation to delay implementation of Section 22 of the 1993-1994 General Appropriation Act (this section requires counties, beginning this July, to be responsible for mailing motor vehicle registration and licensing renewal requirements to vehicle owners in their respective counties) upon application to the Department by a county governing body no later than May 2, 1994. Granting or denial of the delay is at the sole discretion of the Department and is not appealable to any other body. The delay and implementation may not extend beyond January 1, 1995. Granting of this delay does not prohibit a county from receiving its funding allocation provided for implementation of this system.

Indenture for Certain Tax-Exempt Bonds Issued Must Include Covenant Requiring Issuer to File Certain Information (S. 1182, Sen. Drummond). This bill requires a tax-exempt bond issued by or on behalf of any public or private body or entity to include in the issuing indenture a covenant. This covenant must require the issuer to file with a central repository for availability in the secondary bond market, when requested, (1) an annual independent audit, within 30 days of the issuer's receipt of the audit, and (2) event-specific information within 30 days of an event adversely affecting more than 5 percent of revenue.

Definition of "Probationary Employee" as Pertains to Faculty at State Technical Colleges (S. 1212, Sen. Setzler). This bill amends the definition of "probationary employee" as pertains to state employee grievance procedures to provide that a faculty member at a state technical college is considered a probationary employee for an initial working test period of employment of not more than two full academic years' duration.

County Governing Body May Allow Payment of Property Taxes in Installments in Hardship Cases (S. 1251, Sen. Giese). This bill allows a county governing body, by ordinance, to permit payment of property taxes by installments in cases of hardship. For purposes of this bill, "hardship" is defined as: (1) a medical emergency; (2) financial hardship which if unresolved makes it impossible for the taxpayer to provide the basic requirements of living for himself or his family; (3) imminent eviction; (4) possible loss of employment; (5) severe financial hardship; or (6) hardship associated with military service.

Without Reference

Family Life Education Must Be Offered Under State's Comprehensive Health Education Act (H. 5018, Rep. J. Wilder). This bill requires instruction in comprehensive health, currently provided to students in the state's public schools, to include instruction on family life education for students in grades four through twelve. The bill also expands the definition of "family life education" for purposes of this instruction to include instruction on the responsibilities of parenting.

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South Carolina Infrastructure Facilities Act (H. 5037, House Ways and Means Committee). This bill establishes a South Carolina Infrastructure Facilities Authority for the purpose of providing financial assistance to local governments to construct, extend and repair environmental infrastructure facilities (water, sewer and solid waste), making it easier for local governments to promote economic development and provide for the health and welfare of their citizens. This bill is virtually identical to H. 4977 (introduced in the House the last week of March and summarized in the March 29 Update under "Ways and Means Committee"), with the difference being that unlike H. 4977, H. 5037 has a provision allowing the authority, as a condition for loaning money for construction of these facilities, to require a local government to submit a financial plan which demonstrates that user charge rate levels for services provided by the facilities will produce sufficient revenues to properly operate and maintain the system and build a reserve for improvements.

Financing Agreements (S. 226, Sen. Leatherman). This bill prohibits a "governmental entity" (i.e., the State and its political subdivisions---counties, school districts, etc.---whose general obligation debt is subject to limitations as provided in Article 10 of the State Constitution) from entering into a financing agreement (other than an enterprise financing agreement) if the principal balance of the financing agreement, when added to the principal amount of limited bonded indebtedness outstanding on the date of execution of the financing agreement, would exceed 8 percent of the assessed value of taxable property in the jurisdiction of the governmental entity. However, the 8 percent limit may be exceeded if the agreement is approved in a voter referendum on the matter. Additionally, if a governmental entity has outstanding any financing agreement (again, other than an enterprise financing agreement), then authorization contained in any bond act permitting the governmental entity to incur general obligation indebtedness is amended so that on the date of issuance of any limited bonded indebtedness pursuant to the bond act, when added to the principal balance under any financing agreement(s) of the entity must not exceed the amount of the governmental entity's debt limit unless approved by voters in a referendum.

The bill defines "financing agreement" as a contract entered into after December 1994 under terms of which a governmental entity acquires use of an asset providing for payments to be made in more than one fiscal year; that payments thereunder are divided into principal and interest components and that title to the asset will be in the name of or be transferred to the governmental entity if all payments pursuant to the financing agreement are made (excluding any contracts entered into in connection with issues of general obligation bonds or revenue bonds issued pursuant to authorization provided in Article 10 of the State Constitution).

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Redemption and Transport of Mobile and Manufactured Homes (S. 967, Sen. Ryberg). This bill adds and revises several provisions pertaining to the redemption and transport of mobile and manufactured homes. The bill requires that when a mobile or manufactured home is levied on for taxes by the delinquent tax collector, then he (the collector), before proceeding to advertise the home for sale, must give 20 days' written notice to the holder of each lien identified on forms provided to the auditor of the county for liens created after December of 1994 and to lienholders contained in the certificate of title held by the Division of Motor Vehicles of the Department of Revenue and Taxation for liens created prior to January of 1995. The bill specifies information to be printed on the notice and requires the collector to be paid \$5 for giving this notice, with payment provided by the lienholder receiving the notice.

The bill also requires a person applying for a title on a mobile or manufactured home to provide to the auditor of the county where the home is to be located a copy of the completed application submitted to the Division of Motor Vehicles of the Department of Revenue and Taxation. A person who fails to provide a copy to the county auditor is guilty of a misdemeanor and upon conviction must be fined between \$100 and \$500 or imprisoned not more than 30 days. Within 15 days of the relocation of a mobile home from one county to another, the owner, agent or person in possession must obtain a license from the governing body of the county where the home is located. Before issuing a license for a mobile home to be located in any county in the State, the licensing agent must require the person applying for the license to provide a copy of the certificate of title to the mobile home or a copy of the completed application submitted to the Division of Motor Vehicles. When county licensing requirements have been met, the licensing agent is to give the applicant a certified copy of the application form. Additionally, an electric supplier, prior to connecting electricity to any mobile home, must obtain from the owner, rental agent or person in possession of the home a copy of the certified license application form indicating the license fee was paid.

The bill prohibits a moving permit (to relocate a mobile home) from being issued unless the licensing agent has been provided a copy of the certificate of title of the mobile home or a copy of the completed application submitted to the Division of Motor Vehicles and requires this information, along with a copy of the paid tax receipt from the county from where the home is being moved, to be furnished to the licensing agent of the county to where the home is being transported.

The bill also specifies that the amount of rent required to be paid by a defaulting taxpayer or lienholder to redeem his property after a delinquent tax sale must not exceed 1/12 (one-twelfth) of the taxes for the last completed property tax year, exclusive of any penalties, costs and interest for each month between the sale and redemption, with the monthly rental required to be at least \$10. For purposes of this rent

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calculation, more than 1/2 (one-half) the days in any months counts as a whole month.

These provisions apply to property taxes going into execution after December of 1994.

Pilot Project for School-Based Counseling Services (S. 1180, Sen. Bryan). This joint resolution requires the Department of Mental Health and the Department of Education to jointly establish a three-year pilot project for school-based counseling services, with the purpose of this project being to provide an array of school-based and child-focused counseling services developed by the Department of Mental Health in designated schools. This pilot project must serve at least 14 schools and the project's services must at a minimum include a child-focused school-based counseling clinic, and training, consultation and support programs for school staff. The joint resolution lists selection criteria for choosing schools to participate in this project and also lists the responsibilities of the Department of Mental Health and local school education authorities in providing equipment and staffing for this project. It is the joint responsibility of the Department of Mental Health and the Department of Education to select individual schools and mental health centers within the designated parameters for participation in this project.

The joint resolution also requires the departments to use Medicaid reimbursement to offset the cost to the State of this project. Centers and schools designated in this project must explore ways of redirecting or expanding support other than state funds, and the departments must use a strategy to maximize the probability of federal and/or foundation funding. Also established is a School-Based Mental Health Project Advisory Board, which is to meet quarterly to review pilot project information and advise in regard to the project's implementation. Participating centers and schools must provide quarterly updates to this board. Membership of this board consists of three members---one each appointed by the Superintendent of Education, the director of the Department of Mental Health, and the Legislative-Governor's Committee on Mental Health and Mental Retardation--plus other individuals serving in an ex-officio capacity as the board considers necessary.

The departments involved in this pilot project must submit annual reports on the progress of this project by September of each year to the Legislative-Governor's Committee on Mental Health and Mental Retardation. This project ends July 1, 1997. An interim and final evaluation must be provided to the Legislative-Governor's Committee on Mental Health and Mental Retardation by, respectively, September 1, 1996 and November 1, 1997, with the committee required to forward its final evaluation with its recommendations for school-based counseling services to the General Assembly by January 15, 1998.

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Contested Matters Heard by Former Commissioner of Labor May Be
Appealed to an Administrative Law Judge (S. 1307, Senate Labor, Commerce
and Industry Committee). This bill provides that any contested case or
matter heard or decided by the former Commissioner of Labor, his designee
or any other employee of the former Department of Labor may be appealed to
an administrative law judge, instead of being appealed to the OSHA
(Occupational Safety and Health Administration) Review Board.

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